

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: Nine-F Ranch Co. Inc.; Grande Ranch Co.

OBJECTORS: Grande Ranch Co.; Helen Rostad; Rhynard  
Ranch LLP

**CASE 40A-0443-R-2022**

40A 145842-00

40A 198376-00

40A 202963-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

Water Right Claims 40A 145842-00, 40A 198376-00, and 40A 202963-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). These claims received issue remarks. Issue remarks result from Department of

Natural Resources and Conservation (“DNRC”) claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. Grande Ranch Co. objected to Claims 40A 198376-00 and 40A 202963-00. Helen Rostad and Rhynard Ranch LLP objected to these claims via late-objection.

The Court consolidated these claims into the above-captioned case on September 26, 2022. The Court held a status conference on November 3, 2022. The Court then set a filing deadline. Grande Ranch Co. filed a response on November 14, 2022.

The information discussed in this Report may be found in the Court’s Full Court Enterprise Docketing System.

### **FINDINGS OF FACT**

1. Claim 40A 145842-00 appeared with the following issue remarks:  
  
THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 40A 145842-00, 40A 198376-00, 40A 202963-00.  
  
POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.
2. Claim 40A 198376-00 appeared with the following issue remark:  
  
THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 40A 145842-00, 40A 198376-00, 40A 202963-00.
3. Claim 40A 202963-00 appeared with the following issue remarks:  
  
THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS

STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 40A 145842-00, 40A 198376-00, 40A 202963-00.

WAYNE E. RHYNARD AND HELEN ROSTAD EACH FILED LATE OBJECTIONS TO THE OWNERSHIP, PRIORITY DATE, PURPOSE OF RIGHT, VOLUME, PLACE OF USE, MAXIMUM ACRES, POINT OF DIVERSION, MEANS OF DIVERSION, PERIOD OF USE, FLOW RATE, SOURCE AND ALLEGED ABANDONMENT OR NONPERFECTION. ON DECEMBER 31, 1998 GRANDE RANCH COMPANY, RHYNARD RANCH LIMITED PARTNERSHIP AND HELEN E ROSTAD FILED A STIPULATION AND SETTLEMENT AGREEMENT SPECIFYING CHANGES TO BE MADE TO THIS CLAIM. THE LATE OBJECTIONS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION. THE STIPULATION AND SETTLEMENT AGREEMENT WILL BE REVIEWED AT THAT TIME.

THE CLAIMED POINTS OF DIVERSION ARE IN QUESTION. THE LOCATION OF THE DIVERSIONS CANNOT BE IDENTIFIED FROM AVAILABLE DATA. IT IS UNCLEAR HOW DIVERSION NOS. 2 AND 3 ARE USED TO IRRIGATE THE CLAIMED PLACE OF USE AS THEY APPEAR DOWN GRADIENT FROM IT.

4. The above-captioned claims use as their basis a Notice of Appropriation filed by Henry Kertz on September 14, 1886. The Kertz Appropriation was for 640 miner's inches.

5. Grande Ranch Co. states that Claims 40A 198376-00 and 40A 202963-00 are actually based on a Notice of Appropriation with a priority date of April 17, 1895 filed by John Kelly. The Kelly Appropriation was for 200 miner's inches from Warm Springs Creek.

6. Grande Ranch Co. requests that Claim 40A 198376-00 be modified as follows:

**Priority Date:** ~~SEPTEMBER 14, 1886~~ **APRIL 17, 1895**

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		E2		12	7N	8E	MEAGHER

**Period of Diversion:** ~~JUNE 1 TO OCTOBER 31~~  
**JANUARY 1 TO DECEMBER 31**

2		S2		7	7N	8E	MEAGHER
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**Period of Diversion:** ~~JUNE 1 TO OCTOBER 31~~  
**JANUARY 1 TO DECEMBER 31**

3		S2SW		8	7N	8E	MEAGHER
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**Period of Diversion:** ~~JUNE 1 TO OCTOBER 31~~  
**JANUARY 1 TO DECEMBER 31**

**Period of Use:** ~~JUNE 1 TO OCTOBER 31~~  
**JANUARY 1 TO DECEMBER 31**

7. Grande Ranch Co. includes the “Kelly Appropriation” and a Declaration of John Grande to support this request. In the Declaration, John Grande states he grew up working on Grande Ranch and is now president of Grande Ranch Co.

8. Grande Ranch Co. requests that the Court approve the 1998 stipulation referenced in the issue remark on Claim 40A 202963-00. The stipulation is signed by representatives of Grande Ranch Co., Rhynard Ranch Limited Partnership, and Helen Rostad. That stipulation calls for the following modifications to Claim 40A 202963-00:

**Priority Date:** **APRIL 17, 1895**

**Flow Rate:** **5 CFS**

**Acres:** **60**

**Point of Diversion (correct to):**

1	SWSESW	7	7N	9E
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**Period of Diversion:** April 1 to November 4  
**Diversion Means:** Ditch

**Period of Use:** **April 1 to November 4**

**Place of Use (correct to):**

<u>ID</u>	<u>Acres</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	53	S2		7	7N	9E	Meagher
2	7	S2SW		8	7N	9E	Meagher
T:	60						

**Information Remark:** **THIS CLAIM IS SUBJECT TO A PRIVATE AGREEMENT, NOTICE OF WHICH IS RECORDED IN MEAGHER COUNTY, MONTANA, AND A STIPULATION FILED WITH THE MONTANA WATER COURT.**

9. Grand Ranch Co. also requests the Court modify the period of diversion of Claim 40A 202963-00 to April 1 through November 4.

10. Grand Ranch Co. also uses the Declaration of John Grande to Support the 1998 Stipulation.

11. 5 cubic feet per second is equivalent to 200 miner's inches.

12. The modifications to Claims 40A 198376-00 and 40A 202963-00 would result in the Kertz Appropriation not being overfiled.

13. The Kelly Appropriation is not claimed by any other party in Basin 40A. See, Priority Date Index, Preliminary Decree for Basin 40A.

14. The modifications requested by Grand Ranch Co. should be made.

15. The issue remarks should be removed from each above-captioned claim.

### **APPLICABLE LAW**

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court promotes and will facilitate resolution of objections and issue remarks through settlement or mediation. Parties may confer with each other and exchange information before the case is put on a hearing track. Parties may file settlement documents during these initial settlement proceedings. Rule 16(a), W.R.Adj.R.

3. If a Claimant agrees to reduce an element of their claim, the Court does not need to make a determination as to whether the burden of proof has been met. Rule 17(c), W.R.Adj.R.

4. The Water Court has the authority to hear all objections to the elements of any claim included in a Court issued Temporary Preliminary Decree or Preliminary Decree. Section 85-2-233, MCA.

5. The Water Court is not bound by any settlement or stipulation filed to resolve objections. Rule 17(a), W.R.Adj.R. If a settlement seeks to expand or enlarge an element of a claim, the parties must present evidence sufficient to meet the appropriate burden of proof. Rule 17(b), W.R.Adj.R. If a Claimant agrees to reduce or limit an

element of a claim, the Court may accept the requested modification without further evidence overcoming the appropriate burden of proof. Rule 17(c), W.R.Adj.R.

### **CONCLUSIONS OF LAW**

1. The 1998 Stipulation should be approved.
2. The changes described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of each claim by a preponderance of the evidence.
3. The evidence in the record and the proposed changes provide the Court with a sufficient basis to resolve and remove each issue remark from each above-captioned claim.

### **RECOMMENDATIONS**

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. Post-decree Abstracts of Water Right Claims are served with this Report to confirm the recommended changes have been made in the state's centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Nine-F Ranch Co. Inc.  
PO Box 27  
Martinsdale, MT 59053

Helen Rostad  
~~% Wally Congdon~~  
~~PO Box 85~~  
~~Dell, MT 59724~~  
(Return mail received)

Rhynard Ranch LLP  
448 Clear View Rd  
Martinsdale, MT 59053

**Service Via Electronic Mail:**

Christopher T. Scoones  
Lund Law PLLC  
662 S. Ferguson Ave., Unit 2  
Bozeman, MT 59718  
(406) 586-6254  
Scoones@Lund-Law.com

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**MUSSELSHELL RIVER, ABOVE ROUNDUP**  
**BASIN 40A**

**Water Right Number:** 40A 145842-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** NINE-F RANCH CO INC  
PO BOX 27  
MARTINSDALE, MT 59053

**Priority Date:** SEPTEMBER 14, 1886

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION  
**Irrigation Type:** FLOOD

**Flow Rate:** 14.22 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 375.30

**Source Name:** SOUTH FORK MUSSELSHELL RIVER  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWSE	11	8N	11E	MEAGHER

**Period of Diversion:** APRIL 15 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** PETERSON DITCH NO. 604

**Period of Use:** APRIL 15 TO OCTOBER 1

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	26.00		S2N2NW	8	8N	12E	WHEATLAND
2	75.00		S2NW	8	8N	12E	WHEATLAND
3	186.90		S2	8	8N	12E	WHEATLAND
4	87.40		N2N2	17	8N	12E	WHEATLAND
<b>Total:</b>	<b>375.30</b>						

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.



112903-00	112904-00	112905-00	112906-00	112907-00	112908-00
112909-00	113097-00	145842-00	145843-00		

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**MUSSELSHELL RIVER, ABOVE ROUNDUP**  
**BASIN 40A**

**Water Right Number:** 40A 198376-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** GRANDE RANCH CO  
% JOHN A GRANDE  
148 GRANDE RD  
MARTINSDALE, MT 59053 8758

**Priority Date:** APRIL 17, 1895

**Type of Historical Right:** FILED

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** WARM SPRINGS CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		E2	12	7N	8E	MEAGHER

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** FLOWING

2		S2	7	7N	9E	MEAGHER
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** FLOWING

3		S2SW	8	7N	9E	MEAGHER
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** FLOWING

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			E2	12	7N	8E	MEAGHER
2			S2	7	7N	9E	MEAGHER
3			S2SW	8	7N	9E	MEAGHER

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

198376-00

202963-00

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**MUSSELSHELL RIVER, ABOVE ROUNDUP**  
**BASIN 40A**

**Water Right Number:** 40A 202963-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** GRANDE RANCH CO  
% JOHN A GRANDE  
148 GRANDE RD  
MARTINSDALE, MT 59053 8758

**Priority Date:** APRIL 17, 1895

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 5.00 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 60.00

**Source Name:** WARM SPRINGS CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESW	7	7N	9E	MEAGHER

**Period of Diversion:** APRIL 1 TO NOVEMBER 4

**Diversion Means:** DITCH

**Period of Use:** APRIL 1 TO NOVEMBER 4

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	53.00		S2	7	7N	9E	MEAGHER
2	7.00		S2SW	8	7N	9E	MEAGHER

**Total:** 60.00

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

198376-00      202963-00

THIS CLAIM IS SUBJECT TO A PRIVATE AGREEMENT, NOTICE OF WHICH IS RECORDED IN MEAGHER COUNTY, MONTANA, AND A STIPULATION FILED WITH THE MONTANA WATER COURT.